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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,263	10/10/2000	Noah Syroid	4314 P	5909

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09/30/2005

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EXAMINER

AHMED, AAMER S

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/686,263

Applicant(s)

SYROID ET AL.

Examiner

Aamer S. Ahmed

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-14 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☒ Claim(s) 1-14 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 09/08/05, 10/26/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Additional IDS 10/10/2000.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group III in the reply filed on September 8, 2005 is acknowledged. The traversal is on the ground(s) that claims 7-13 are dependent on claim 6. This is found persuasive. Moreover on further review, claim 14 is also deemed to belong to group 14 and as such will also be examined along with claims 6-13.

Claim Objections

Claim 9 is objected to because of the following informalities: the term "bolus" is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6 and 8-10, and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Howson et al U.S. Patent Number 5,088,981. Howson et al ('981) discloses a system for data representation comprising a drug delivery system (52, 54) a data stream device (50) in communication with the drug delivery device system (52, 54) and a drug delivery display monitor (28), in communication with a data stream device (50), see figures 1 and 2. Furthermore, Howson et al ('981) discloses that the drug delivery system comprises a simulator, which simulates bolus, infusion and anesthetic drug administration (col. 4 line 3). Moreover, Howson et al ('981) discloses a drug display monitor (28) comprising a data decoder (20)

receiving data from the data stream device (50); a dosage calculator (32) receiving decoded data from the data decoder; a drug modeler (26) and normalizer (24) receiving calculated data from the data decoder; a storage device (16), receiving drug and dosage data from the drug modeler and normalizer; and a display generator (28), wherein the display generator produces a display of drug dosage, drug name, past, present and predicted drug site concentration and a system for data representation comprising a processor (16), computing drug models, producing an internal representation of drug display data and decoding a data stream; a memory unit in communication with the processor; a graphics adapter (24c) in communication with the processor and a display monitor in communication with the graphics adapter, see figures 1 and 2 and col. 13, 14 and 15.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howson et al ('981) in view of Teeple Jr. U.S. Patent Number 5,925,014. Howson et al ('981) discloses the drug delivery system as described above in reference to claim 6 and further comprising an infusion pump (14 see col. 10 line 13). Howson et al ('981) fails to disclose an anesthetic administration machine and one or more bar coded syringes. Teeple Jr. discloses an anesthetic administration machine (30 see figure 3); and one or more bar coded syringes (31-33 see figure 3). It would have been obvious to one having ordinary skill in the art at the time of invention by applicant to modify the drug delivery system of Howson et al ('981) by incorporating anesthesia administration and bar coded syringes as taught by Teeple Jr. ('014) in order to insure that the proper drug mix is achieved, reducing if not eliminating the possibility for human error (Teeple Jr. col. 4 line 67).

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 6-12 and 14 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 6-11, 15 and 19 of copending Application No. US 2003/0156143 A1. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 20040009459 A1	Anderson, James H. et al.
US 20020168618 A1	Anderson, James H. et al.
US 20020137014 A1	Anderson, James H. et al.
US 6796305 B1	Banner; Michael J. et al.
US 5745378 A	Barker; Craig S. et al.
US 20050119914 A1	Batch, Richard M.
US 5104374 A	Bishko; Jay R. et al.
US 6070761 A	Bloom; Nicole D. et al.
US 20050177096 A1	Bollish, Stephen J. et al.
US 5957885 A	Bollish; Stephen J. et al.
US 5385474 A	Brindle; Charles
US 4688577 A	Bro; William J.
US 5596694 A	Capps; Stephen P.
US 4533346 A	Cosgrove, Jr.; Robert J. et al.
US 5751931 A	Cox; Kenneth Charles et al.
US 20020006443 A1	Curatolo, William J. et al.
US 6289299 B1	Daniel, Jr.; William E. et al.
US 4823283 A	Diehm; Brian D. et al.
US 4813013 A	Dunn; Robert M.
US 5713856 A	Eggers; Philip N. et al.
WO 3019185 A1	EVANS, ROBERT F
US 20030065537 A1	Evans, Robert F.
US 20020077852 A1	Ford, Alan D. et al.
US 6269340 B1	Ford; Alan D. et al.
US 5681285 A	Ford; Alan D. et al.
US 5814015 A	Gargano; Diane A. et al.
US 20050180615 A1	Gerder, Henning
US 6042548 A	Giuffre; Kenneth A.
US 6647358 B2	Grass; George M. et al.
US 6542858 B1	Grass; George M. et al.
US 4752893 A	Guttag; Karl M. et al.
US 5807115 A	Hu; Oliver Yoa-Pu
US 5620312 A	Hyman; Oscar et al.
US 5010473 A	Jacobs; James R.
US 5522798 A	Johnson; Noel L. et al.
US 4814755 A	Johnson; Peter W. et al.
US 20050059924 A1	Katz, Hal H. et al.
US 6768920 B2	Lange; Daniel H. et al.

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US 5588104 A	Lanier; Jaron Z. et al.
US 4464172 A	Lichtenstein; Eric S.
US 5592195 A	Misono; Shinji et al.
US 6009346 A	Ostrow; Alvin S.
US 5830150 A	Palmer; Douglas A. et al.
US 5680590 A	Parti; Michael
US 5431627 A	Pastrone; Giovanni et al.
US 5935099 A	Peterson; Thomas L. et al.
US 5812134 A	Pooser; Todd et al.
US 5873731 A	Prendergast; William K.
US 5121469 A	Richards; Paul T. et al.
US 5957860 A	Rodiera Olive; Jose J
US 5317321 A	Sass; Paul F.
US 6186142 B1	Schmidt; Matthew F. et al.
US 5484602 A	Stanley; Theodore H. et al.
US 4885173 A	Stanley; Theodore H. et al.
US 5923330 A	Tarlton; Prakairut et al.
US 5645531 A	Thompson; Thomas C. et al.
US 5733259 A	Valcke; Christian P. et al.
US 20050171815 A1	Vanderveen, Timothy W.
US 5651775 A	Walker; Richard Bradley et al.
US 5262944 A	Weisner; Steven J. et al.
US 20030156143 A1	Westenskow, Dwayne et al.
US 5021976 A	Wexelblat; Alan D. et al.
US 20030139701 A1	White, Gale et al.
US 6519569 B1	White; Gale et al.
US 4551133 A	Zegers de Beyl; Rene H. et al.
US 5796398 A	Zimmer; Harry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aamer S. Ahmed whose telephone number is 571-272-5965. The examiner can normally be reached on Monday thru Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.A.



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